

IN THE COURT OF COMMON PLEAS
FULTON COUNTY, STATE OF OHIO

FILED
FULTON COUNTY
COMMON PLEAS COURT
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STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO
Environmental Enforcement Section
30 E. Broad Street, 25th Floor
Columbus, Ohio 43215-3428

Plaintiff,

v.

KURDZIEL IRON OF WAUSEON
630 W. Leggett St.
Wauseon, Ohio 43567
c/o Statutory Agent
LEONARD COOK
525 Enterprise Ave.
Wauseon, Ohio 43567

Defendant.

CASE NO. 98CV00211

JUDGE JAMES E. BARBER

COMPLAINT FOR CIVIL
PENALTIES AND
INJUNCTIVE RELIEF

MARY GYPE
CLERK

The State of Ohio, by and through its Attorney General, Betty D. Montgomery, at the written request of the Director of Environmental Protection ("Director"), hereby institutes this action to enforce Chapter 3704 of the Ohio Revised Code and the rules adopted thereunder. Plaintiff alleges as follows:

GENERAL ALLEGATIONS

1. Defendant Kurdziel Iron of Wauseon is a Michigan Corporation. It was incorporated in 1989. Its principal place of business is 630 W. Leggett St., Wauseon Ohio, Fulton County. It is licensed to do business in Ohio under license number 753467.
2. Defendant is a "person" as that term is defined by R.C. 1.590 and 3704.01 (0).
3. From at least July 1989 to the present, Defendant has been the owner and/or

operator of a gray and ductile iron foundry located at 620 W. Leggett St., Wauseon, Fulton County, Ohio (hereinafter the "facility").

4. Since at least May 1990, the facility has been engaged in the production of gray and ductile iron counterweights for the construction industry. The facility produces the castings for the counterweights, which are finished elsewhere.

5. The production of iron castings at the facility currently utilizes the following ten emissions unit:

<u>Unit Description</u>	<u>Unit Number</u>
Mold Release Coating	K001
Cupola	P004
Mold Making Machine	P008
Arc Lancing Operation	P011
Sand Preparation and Reclaim	P003
Shake Out Machine	P006
Grinding Operations	P007
Core Room Operations	P009
Pouring and Cooling	P010
Plant Roadways & Parking Areas	P012

6. Each of emission units identified in paragraph number 5 above emit or cause the emission of "air contaminants" in the form of "particulate matter" as those terms are defined by R.C. 3704.01(B), O.A.C. Rule 3745-15-01(C), and O.A.C. Rule 3745-17-01(B)(12).

7. Because they emit air contaminants, each of the emissions units identified in paragraph number 8 above constitute an "air contaminant source" as that term is defined by R.C. 3704.01(C), O.A.C. 3745-15-01(D) and 3745-35-01(B)(1).

8. The allegations of paragraphs number 1 through 8 are incorporated into each count of this complaint as if rewritten therein.

9. In accordance with Civ. R. 8 (A), this complaint seeks relief in excess of \$25,000.

COUNT ONE
EXCEEDING ALLOWABLE PARTICULATE EMISSIONS

10. R.C. 3704.05 (C) provides that no person shall violate the terms of a permit issued pursuant to R.C. 3704.03. R.C. 3704.05(A) provides, in part, that no person shall cause, permit or allow the emission of an air contaminant in violation of any rule promulgated by the Director.

R.C. 3704.05 (G) provides, in part, that no person shall violate any rule adopted by the Director.

11. On April 22, 1998, Ohio EPA issued permit to operate number 0326000017 P004 for Source P004. PTO No. 0326000017 P004 established an emission limitation for particulate matter for Source P004 of 26.9.pounds per hour.

12. O.A.C. 3745-17-11(B)(2) provides, in part, that any owner or operator of a source of particulate emissions which is located in Fulton County shall operate said source so that the particulate emissions do not exceed the allowable emission rate specified by Curve 2 of Figure II.

13. From at least May 1990 to the present, Curve 2 of Figure II in O.A.C. 3745-17-11 has imposed an allowable particulate emission limit of 26.9 pounds per hour for the Source P004.

14. From at least May 1990 to the present, Defendant has caused, permitted or allowed the operation of Source P004 in violation of the applicable particulate emission limit specified in PTO No. 0326000017 P004 and/or Curve 2 of Figure II in O.A.C. 3745-17-11.

15. The acts alleged in this count constitute violations of R.C. 3704.05(A), (C) and (G) and O.A.C. 3745-17-11(B)(2), for which Defendant is subject to injunctive relief pursuant to R.C. 3704.06(B) and for which Defendant is liable to pay the State of Ohio civil penalties of up

to Twenty-Five Thousand Dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

COUNT TWO
FAILURE TO OBTAIN PERMIT TO INSTALL

16. R.C. 3704.05(G) provides, in part, that no person shall violate any rule of the Director.

17. O.A.C. 3745-31-02(A) provides, in part, that no person shall cause, permit, or allow the installation of a new source of air contaminants, or modification of an air contaminant source, without first applying for and obtaining a Permit to Install ("PTI") from the Director.

18. Defendant caused, permitted, or allowed the installation of at least the following Sources without first obtaining a PTI: K001, P006, P008, P011 and P012.

19. The acts alleged in this count constitute violations of O.A.C. 3745-31-02(A) and R.C. 3704.05(G), for which Defendant is subject to injunctive relief pursuant to R.C. 3704.06(B) and for which Defendant is liable to pay the State of Ohio civil penalties of up to Twenty-Five Thousand Dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

COUNT THREE
OPERATION OF SOURCES WITHOUT A PERMIT TO OPERATE

20. R.C. 3704.05 (G) provides, in part, that no person shall violate any rule of the Director.

21. O.A.C. 3745-35-02 provides, in part, that no person shall cause, permit or allow the operation of an air contaminant source without applying for and obtaining a permit to operate.

22. Defendant caused, permitted or allowed the operation of Source No. P006 from at least June 26, 1990 to Dec. 5, 1990 without first obtaining a permit to operate.

23. Defendant caused, permitted or allowed the operation of Source No. P008 from at least July 1, 1993 to Sept. 22, 1993 without first obtaining a permit to operate.

24. The acts alleged in this count constitute violations of O.A.C. 3745-35-02, for which Defendant is subject to injunctive relief pursuant to R.C. 3704.06(B) and for which Defendant is liable to pay the State of Ohio civil penalties of up to Twenty-Five Thousand Dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

COUNT FOUR
FAILURE TO INSTALL CONTROL EQUIPMENT

25. R.C. 3704.05 (G) provides, in part, that no person shall violate any rule of the Director.

26. O.A.C. Rule 3745-21-08 is applicable to "new stationary sources." The cupola, Source No. P004, is a new source as that term is used in O.A.C. 3745-21-08.

27. O.A.C. 3745-21-08 (D) provides, in part, that no person shall emit carbon monoxide from a grey iron cupola without employing an afterburner or equivalent device.

28. From May 1990 until September 1994, Defendant emitted carbon monoxide from a grey iron cupola without employing an afterburner or other similar device.

29. The acts alleged in this count constitute violations of O.A.C. 3745-21-08, for which Defendant is subject to injunctive relief pursuant to R.C. 3704.06(B) and for which Defendant is liable to pay the State of Ohio civil penalties of up to Twenty-Five Thousand Dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

COUNT FIVE
AIR POLLUTION NUISANCE

30. R.C. 3704.05 (G) prohibits any person from violating any rule of the Director of Environmental Protection. R.C. 3704.05 (A) prohibits any person from causing, permitting or allowing emission of an air contaminant in violation of a rule adopted by The Director.

31. O.A.C. 3745-15-07(A) prohibits as an unlawful nuisance the emission or escape into the open air of, inter alia, dust, dirt, grime, fumes, odors or other substances in such a manner or in such amounts as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property.

32. Periodically, from 1989 to the present, Defendant has operated the facility in violation of O.A.C. 3745-15-07 (A).

33. The acts alleged in this count constitute violations of O.A.C. 3745-15-07, for which Defendant is subject to injunctive relief pursuant to R.C. 3704.06(B) and for which Defendant is liable to pay the State of Ohio civil penalties of up to Twenty-Five Thousand Dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Issue an injunction enjoining Defendants to immediately comply with R.C. Chapter 3704 and the regulations adopted thereunder;
- B. Order Defendants to pay the costs of this action;
- C. Order Defendants to pay pursuant to R.C. 3704.06(C), an appropriate civil penalty for the violations set forth above in the amount of twenty-five thousand dollars (\$25,000) per day

for each day of each violation (\$25,000) including each day of each violation after the filing of this complaint;

- D. Retain jurisdiction of this suit for the purpose of making any order or decree which it may deem necessary at any time to carry out its judgment; and
- E. Grant such other relief as may be just.

Respectfully submitted,

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO


SUSAN E. ASHBROOK (0039483)

APRIL BOTT (0066463)
Assistant Attorneys General
Environmental Enforcement Section
30 E. Broad St., 25th floor
Columbus, Ohio 43215-3428
Telephone: (614) 466-2766
Fax (614) 644-1926

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